

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<u>RYAN KERWIN,</u>	)	
	)	
v.	)	<b>C.A. No. 05-93Erie</b>
	)	<b>District Judge McLaughlin</b>
<b>WILLIAM MCCONELL,</b>	)	<b>Magistrate Judge Baxter</b>
<b>Defendant.</b>	)	

**ORDER**

By Order dated November 29, 2006, this Court dismissed Defendant's motion for summary judgment without prejudice as there was an inconsistency as to the exhaustion of administrative remedies between the grounds argued in the motion and the supporting documents.

Thereafter, Plaintiff filed Objections to that Order arguing that Defendant had verbally waived any exhaustion/procedural default argument at a telephonic hearing held before this Court in March of 2006, on a pending motion for sanctions. Plaintiff argued that the motion for summary judgment which had been dismissed should be reinstated.

This Court has reviewed a transcript of those proceedings and finds that while defense counsel did not specifically waive an exhaustion/procedural default argument, Plaintiff should be permitted the relief he seeks.

AND NOW, this 19th day of December, 2006;

IT IS HEREBY ORDERED that the Order dated November 29, 2006 [Document # 64] is VACATED. Additionally, the Orders granting extensions of time [Documents # 68 and 69] are VACATED.

IT IS FURTHER ORDERED that the Clerk of Courts is directed to refile Defendant's motion for summary judgment [Document # 53] as of today's date.

IT IS FURTHER ORDERED that Plaintiff may refile his motion for summary judgment with a supporting brief before January 22, 2007.

IT IS FURTHER ORDERED that Plaintiff's motion for production of transcripts [Document # 70] is DENIED. Plaintiff must order a copy of the transcript from the court reporter and pay any fees associated with transcription.

IT IS FURTHER ORDERED that Plaintiff's motion for speedy disposition [Document # 71] is granted in part and denied in part. Specifically, the motion for speedy disposition is granted as to Plaintiff's requests in regards to the motion for production of documents and the objections. The motion for speedy disposition is denied as to the Defendant's motion for summary judgment; Defendant's motion for summary judgment will be placed back on the docket and will be decided in due course.

S/ Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
CHIEF UNITED STATES MAGISTRATE JUDGE